

National Service Criminal History Check Interim Disallowance Guide

August 2015

This guide applies to all NSCHC noncompliance findings identified through oversight and monitoring (e.g. IPERA sampling, Inspector General audit or investigation, site visit, desk review, etc.). The purpose of this guide is to explain how to resolve NSCHC findings. This Guide is intended for use by individuals who monitor and enforce compliance with the National Service Criminal History Check (NSCHC) requirements among CNCS grantees and subgrantees (grantees), including CNCS Program Officers, CNCS Grants Officers, State Commission staff, SIF intermediary staff, and other prime grantee staff (hereafter, “Monitoring Officials”). CNCS anticipates issuing a Final Disallowance Guide in early 2016.

This document is divided as follows:

- Part I explains the difference between ineligibility and noncompliance;
- Part II explains the responsibilities of Monitoring Officials when they find instances of noncompliance;
- Part III describes how to calculate disallowance;
- Part IV explains how grantees may self-report noncompliance;
- Part V explains the timing of the issuance of monitoring and payment letters; and
- Appendix A describes the corrective actions required in all cases of NSCHC findings.

I. NONCOMPLIANCE, INELIGIBILITY, AND DISALLOWANCE

Enforcement actions in cases of noncompliance shall include, at a minimum, cost disallowance and corrective action.

Ineligibility vs. Noncompliance: An important distinction exists between ineligible individuals and instances of noncompliance.

Noncompliance in this context refers to situations where individuals are eligible to serve, but a grantee failed to perform one or more of the following actions:

- conduct all required NSCHC components on any individual in a covered position;
- conduct the required check components before an individual starts work or service in a covered position;
- perform *accompaniment* to ensure that an individual in a covered position with access to vulnerable populations was in the physical presence of a qualified individual, as specified in 45 C.F.R. § 2540.205(g), while checks were pending;
- keep proper documentation; or
- be in compliance with 45 C.F.R. § 2540.200 - 2540.207.

After eligibility has been established through corrective action, costs associated with that individual’s work or service may be disallowed.

An **ineligible** individual (per 42 U.S.C. § 12645g(c)) is anyone who (1) is registered or required to be registered on a sex offender registry; (2) has been convicted of murder; (3) refuses to consent to the NSCHCs; or (4) makes a false statement in connection with his or her NSCHC. Ineligible individuals must be immediately removed from CNCS grants. All costs associated with that ineligible individual’s work or service are unallowable.

II. MONITORING OFFICIALS’ RESPONSIBILITIES TO ASSESS AND REMEDY NONCOMPLIANCE

ASSESSING NONCOMPLIANCE

In assessing and remedying noncompliance, a Monitoring Official must identify what actions a grantee has taken to meet the NSCHC requirements, even if they have not fully complied. The disallowance amount will depend, in part, on what they did in the absence of full compliance. Effective monitoring depends on a Monitoring Official having a detailed understanding of the NSCHC requirements, which can be found at <http://www.nationalservice.gov/resources/criminal-history-check>.

UPON IDENTIFYING NONCOMPLIANCE, THE MONITORING OFFICIAL MUST:

1. EXPAND THE SCOPE OF REVIEW

The term “scope of review” means the number of individuals the Monitoring Official reviews to determine if the grantee is conducting and documenting the NSCHCs correctly.

If during a single monitoring activity a Monitoring Official discovers two or more individuals’ files whose CHC checks are noncompliant, the Monitoring Official must expand the scope of review of the grantee’s CHC files. Expanding the scope of review means that the Monitoring Official should review additional CHC files to more completely assess the scope of noncompliance. The standard scope of review will include all currently serving individuals in covered positions, as of the date of the above monitoring activity.

At their discretion, Monitoring Officials may expand the scope of review if they believe that the standard of reviewing all currently serving individuals in covered positions does not allow them to adequately assess the scope of a grantee’s noncompliance. Monitoring Officials may also limit the scope of review if there is reasonable evidence that the noncompliance is limited to a subset of files (e.g., to a particular site). *The Monitoring Official must document his or her rationale for expanding or limiting the scope of review.*

Monitoring Officials may direct a grantee to conduct the review and calculate the disallowance according to the Matrix. If the review is conducted by the grantee, the reported findings must be verified by the Monitoring Official. The Monitoring Official may verify findings reported by the grantee either by reviewing all supporting documentation for each file, or by reviewing a sample of the files. The sampling methodology used by Monitoring Officials should be applied consistently.

2. INITIATE CORRECTIVE ACTION TO ESTABLISH ELIGIBILITY

For every instance of noncompliance with currently serving individuals in covered positions, the grantee must immediately demonstrate the eligibility of the individual by conducting all applicable NSCHC checks consistent with the regulations, including rechecking any individuals screened through a noncompliant process, and ensure they have the training and systems in place to avoid noncompliance in the future. This is called “corrective action.” **Appendix A** provides guidance on what corrective actions are required in specific situations.

Corrective action is required to be implemented immediately upon discovery of the noncompliance, and must not be delayed pending inclusion in a monitoring feedback letter.

In the event an **ineligible** individual is working or serving in a CNCS-funded program or project, the following actions must occur:

- (1) Immediately remove that individual from serving or working on a CNCS grant.
- (2) Report such findings to the CNCS via email at CHC@cns.gov, with a subject heading of: ***Ineligible Individual Notification***. For grantees who discover this when monitoring their subgrantees, copy your CNCS program/grants officer.

3. IMPLEMENT A MANUAL HOLD, IF NECESSARY

Monitoring Officials should add a special condition to the grant when the grantee is not responsive to requests for information or to performing corrective action and initiate a manual hold (unless a manual hold is not an option for the Monitoring Official under state law).

4. CALCULATE DISALLOWANCE

Calculate disallowance as specified in the next section.

IV. CALCULATING DISALLOWANCE

1. INELIGIBLE INDIVIDUALS

For ineligible individuals (i.e., murderers and sex offenders, as discussed in Part I of this Guide), disallow all costs on any CNCS grant, including any matching funds, associated with the ineligible individual. This includes any stipend, salaries, fringe benefits or education award. Calculate disallowance from the individual's start date in a covered position.

2. REVIEW GRANTEE PARTICIPATION IN THE ASSESSMENT PERIOD

From October 14, 2014, to December 5, 2014, CNCS offered an Assessment Period where grantees had a one-time opportunity to review their personnel files and come into *complete* NSCHC compliance without risk of financial penalty. Individual files where grantees **corrected** instances of missing, late or incomplete checks during the Assessment Period are not subject to cost disallowance for any noncompliance occurring before December 6, 2014. Individual's for whom grantees did **not correct** noncompliance by completing any missing or incorrectly performed checks are subject to disallowance.

The 2014 Assessment Period cost disallowance moratorium does not apply to:

- Ineligible individuals,
- Audits and investigations by the CNCS Office of the Inspector General prior to the assessment period,
- Debt collection letters issued prior to the assessment period, or
- Transactions tested under the 2014 Improper Payments Elimination and Recovery Act (IPERA).

3. DETERMINE THE OVERALL PERCENTAGE OF NONCOMPLIANT INDIVIDUALS

The NSCHC Risk-Based Disallowance Matrix (matrix) discussed in the following section requires a determination of how extensive noncompliance for a grantee is at the time of monitoring. To conduct this assessment, first determine how many individuals are in the scope of review, as discussed in Section II.1. Then, determine what percentage of the covered positions were found to be noncompliant.

Assessment Period: Individuals whose checks were corrected during the Assessment Period are considered compliant for the purpose of determining the overall percentage of noncompliant individuals. Instances where noncompliant checks were **not corrected** as required during the Assessment Period shall be subject to disallowance per the risk-based disallowance matrix, and should be included in determining the overall percentage of noncompliant individuals. Please see the Assessment Guidance at <http://www.nationalservice.gov/resources/criminal-history-check> for more information.

4. USING THE MATRIX, DETERMINE THE DISALLOWANCE AMOUNT FOR EACH INDIVIDUAL

This Agency-wide risk-based matrix establishes recommended disallowance amounts based on the number of individuals out of CHC compliance and the degree to which the grantee mitigated the risk to CNCS program beneficiaries. An assessment of the scope and mitigation present in each individual file with CHC noncompliance yields a per-individual disallowance amount. Further information on identifying actions that contribute to mitigation is provided below the matrix.

NSCHC RISK-BASED DISALLOWANCE MATRIX			
If overall % of noncompliant individuals is		≤ 50%	> 50%
Disallowance for each individual for whom...	Substantial Mitigation is present is...	↓	↓
	Moderate Mitigation is present is...	\$250	\$500
	Low Mitigation is present is...	\$500	\$1000
		\$750	\$1500
MITIGATION RATING	NO ACCESS OR EPISODIC ACCESS TO VULNERABLE POPULATIONS	RECURRING ACCESS TO VULNERABLE POPULATIONS	
Substantial Mitigation	Program adjudicated a sex offender check before the individual began work or started service on the grant AND at least one of the following is present, even if late: <ul style="list-style-type: none">Initiated a vendor check that included a nationwide search of state criminal history information; ORInitiated the State of Service or State of Residence check through CNCS designated sources; ORInitiated a fingerprint-based FBI check.	Program met the requirements of 1, 2, and 3: <ul style="list-style-type: none">1. Performed accompaniment (if required); AND2. Adjudicated a sex offender check before the individual began work or started service on the grant; AND3. Initiated one of the following on time:<ul style="list-style-type: none">A vendor check that included a nationwide search of state criminal history information; ORA State of Service or State of Residence check through CNCS designated sources; ORA fingerprint-based FBI check.	
Moderate Mitigation	Program adjudicated a sex offender check AND at least one of the following is present, even if both are late: <ul style="list-style-type: none">Initiated a vendor check that included a nationwide search of state criminal history information; ORInitiated the State of Service or State of Residence check through CNCS designated sources; ORInitiated a fingerprint-based FBI check.	Program met the requirements of 1 or 2: <ul style="list-style-type: none">1. Adjudicated a sex offender check before the individual began work or started service on the grant AND at least one of the following is present, even if late;<ul style="list-style-type: none">A vendor check that included a nationwide search of state criminal history information; ORA State of Service or State of Residence check through CNCS designated sources; ORA fingerprint-based FBI check.2. Performed accompaniment (if required) AND initiated one of the following on time:<ul style="list-style-type: none">A vendor check that included a nationwide search of state criminal history information; ORA State of Service or State of Residence check through CNCS designated sources; ORA fingerprint-based FBI check.	
Low Mitigation	Any other combination of factors that does not meet the requirements for Moderate Mitigation or Substantial Mitigation.		
This matrix does not foreclose CNCS from implementing other remedies for noncompliance or taking other measures as authorized by law. CNCS may update this matrix at any time. The disallowance amount is a remedy for noncompliance per 2 C.F.R. § 200.338.			

This section describes how to evaluate the level of mitigation established by certain actions that are otherwise not compliant. Use the following to determine what mitigating factors described in the matrix are present in a given file.

1. **National Sex Offender Public Website (NSOPW) Check Compliance:** A **compliant** NSOPW check is a nationwide check of the NSOPW cleared and adjudicated before the start of work or service;

Noncompliant Sex Offender Checks that Mitigate Risk:

If a check does not meet the criteria above, it is **not compliant**. The Matrix uses the term “**sex offender check**” to indicate that certain checks can qualify as mitigation. Specifically, a noncompliant sex offender check may mitigate a missing or incomplete nationwide NSOPW if:

- the check is an **incomplete** search of NSOPW.gov where one or more states is not reporting when the check was performed and the result is showing downed states (a compliant complete nationwide NSOPW check must be run and documented to confirm eligibility), or
- the check is an **adjudicated FBI fingerprint check** (which includes a search of the NSOR), or
- the check is a national *sex offender registry check*, other than a check of the NSOPW, provided by a **vendor** (a compliant nationwide NSOPW check must be run and documented to confirm eligibility).

2. **Vendor Check Compliance:** If a grantee used a vendor check, the burden is on the grantee to demonstrate that the vendor criminal history record search meets CNCS’ requirements, which will often require more information that the grantee may need to obtain from the vendor.

Assessing vendor compliance:

A **compliant** vendor check must provide data that is **not time limited** in any way (data goes back as far as the data held by the state repository or FBI), or, if the vendor provides only a pass/fail adjudication, base that adjudication on information that is not time-limited in any way and will have the following:

- For a compliant NSOPW: Complete a nationwide check of the NSOPW before the start of work or service;
- For compliant State Check(s): Use the official CNCS-designated repositories in the States of Service and Residence and initiate state checks no later than the first day of work or service;
- For a compliant fingerprint-based FBI Check: Use the official CNCS-designated repositories or the departmental orders method to go directly to the FBI and initiate FBI checks before the start of work or service;

Noncompliant Vendor Checks that Mitigate Risk:

If a vendor check does not meet the criteria above, it is **not compliant**. However, a noncompliant vendor check may, in some cases, mitigate risk. Some state laws require vendors to limit the criminal history data they provide to their clients (generally, to seven years), which is often far shorter than the period that the state repository or FBI retains criminal history data. This data is “time-limited.” *Time-limited data is not compliant, but still may be used as part of a mitigating vendor check under the Matrix.*

A noncompliant vendor check may mitigate a missing or incomplete:

- NSOPW check, if the vendor check included a nationwide sex offender registry search; or
- State check(s):
 - If the vendor check includes a national search of state criminal information; OR

- If the vendor check includes a check of the official CNCS-designated repository in EITHER the State of Residence OR the State of Service (i.e., includes one compliant state check when two were required)
3. **Accompaniment Compliance:** Accompaniment is required for individuals in covered positions with recurring access to vulnerable populations while checks are pending. A person is accompanied when he or she is in the physical presence of a person cleared for access to a vulnerable population. A program may elect to cease accompaniment of the individual when it has received results clearing the individual through either the state component or the FBI component. The program does not need to receive results from both components before electing to cease accompaniment.

Compliant Accompanier

An employee or representative of a placement site may provide accompaniment if that person's clearance was established under the placement site's rules. For example, if a participant is to serve in a nursing home, accompaniment can be provided by any staff the nursing home has cleared for access. Parents and guardians of the individual who is a member of a vulnerable population may also provide accompaniment as appropriate for the program design. If the person providing accompaniment is in a covered position on a CNCS grant, then they must be cleared by the CNCS NSCHC requirements in order to be qualified for access and serve as an accompanier.

Compliant Documentation

Accompaniment must be documented contemporaneously with the time, date, and name of the individual performing the accompaniment. You should have policies and procedures clearly describing your accompaniment guidelines and documentation procedures that comply with that standard.

Accompaniment that Mitigates Risk: If accompaniment does not meet the criteria above, it is **not compliant**.

Accompaniment that is performed but not documented contemporaneously (as described above), may mitigate risk. If the accompaniment is not documented sufficiently and contemporaneously, it would qualify as mitigating when it is based on a program model where accompaniment is a standard process (for example, teachers in some school programs always accompany volunteers) to qualify as mitigation.

5. CALCULATE THE TOTAL DISALLOWANCE

After applying the matrix for each individual instance of noncompliance, add up the amount of each individual disallowance to determine the total disallowance. Before proceeding to debt collection, evaluate whether three additional criteria apply:

Disallowance cap: As a general rule, CHC disallowance will be capped at 25% of the CNCS federal share of the award. In some cases, the Monitoring Official may believe that the disallowance cap results in a total disallowed amount that is too low to adequately aid enforcement and compel present and future compliance. For example, this may occur when the federal share is relatively small yet the calculated amount would exceed fifty percent of the federal share. In such cases, the Monitoring Official may choose to enforce the calculated total disallowance, even if it exceeds the 25% cap.

Zero dollar grants: Some AmeriCorps grants are zero dollar awards and include no operating funds. For grants that have no operating funds, NSCHC noncompliance enforcement will be capped at 25% of the total value of the education awards associated with the awarded national service positions. Refer to the Notice of Grant Award to ensure that it contains the necessary Special Condition to recover funds from the grantee.

Self-Reported Noncompliance: See Section V, below.

V. SELF-REPORTING

“Self-reporting” occurs when a grantee reports noncompliance to a Monitoring Official prior to any written notice of future oversight or monitoring activity (e.g. IPERA sampling, IG audit or investigation, site visit, desk review, etc.).

If a grantee contacts a Monitoring Official to self-report noncompliance with the NSCHCs, the Monitoring Official must:

- 1) Immediately document that the grantee has self-reported noncompliance, including
 - a. the date of reporting,
 - b. the date of discovery,
 - c. the nature of the noncompliance,
 - d. the scope of the noncompliance to the extent it is known,
 - e. how the noncompliance was identified, and
 - f. any corrective actions taken by the grantee.
- 2) If the grantee has not already done so, direct the grantee to:
 - a. Expand the scope of its review in a manner consistent with the directions on expansions of scope provided above;
 - b. Immediately implement corrective action, as described in Appendix A of this document;
- 3) Calculate the disallowance based on the result of that review, as described in Section IV.5, above; and

The Monitoring Official may:

- 4) Reduce the disallowance amount by 50% of the total calculated disallowance. This reduction should occur *prior to* applying the cap. If the reduced disallowance resulting from Step (4) is higher than 25% of the federal share of the award, the Monitoring Official may then apply the cap, as described above.

Step (4) of this process, the reduction for self-reporting, only applies to grantees that actually self-report—i.e., report noncompliance in advance of any notice of monitoring or oversight activity. The Monitoring Official maintains discretion on applying the disallowance cap when the cap results in a total disallowed amount that is too low to adequately aid enforcement and compel present and future compliance, as described in Section IV.5 above.

For example, suppose a grantee with a total federal share of \$150,000 self-reports noncompliance to a Monitoring Official, which is determined to result in a total disallowance of \$100,000 according to the matrix in Part IV of this document, following the expansion of scope. The Monitoring Official would then reduce the disallowance amount by 50%, as described in Step (4), resulting in a reduced disallowance of \$50,000. The Monitoring Official would then compare this figure to 25% of the federal share, in this case \$37,500. Assuming the Monitoring Official did not believe this to be too low to aid enforcement and compel compliance, he or she would then apply the capped amount of disallowance, \$37,500.

VI. ISSUING MONITORING AND PAYMENT REQUEST LETTERS

1. MONITORING FEEDBACK LETTER

Do not delay sending a monitoring feedback letter while you work to calculate the total disallowance. Calculation of disallowance may require additional information and the review of a substantial number of files. While a definitive amount for disallowance is being determined, Monitoring Officials must not delay the issuance of monitoring feedback letters communicating noncompliance findings for CHC or for other grant requirements.

2. PAYMENT REQUEST LETTER

Once the disallowance amount has been calculated, the Monitoring Official’s organization must issue a payment request letter. Follow policies and procedures and all applicable state laws and regulations for this action.

Appendix A

CORRECTIVE ACTIONS

The purpose of corrective action is to quickly bring the grantee into compliance pending a decision on final enforcement actions. Though uniform corrective actions across programs are most likely to result in consistent enforcement, Monitoring Officials may tailor the corrective actions described below to better address the particular situation. Required corrective action and any follow up must be documented by the Monitoring Official.

NSOPW COMPONENT

1. **Late, Incomplete or Missing NSOPWs:** If a NSOPW search was conducted late or is missing from a file, or is incomplete or inadequately documented, the grantee will be required to implement Corrective Action A.
2. **Incorrect NSOPW:** If a sex offender registry was checked, but was either not a NSOPW.gov check (e.g. a vendor sex offender check, school district sex offender check, or was limited in scope), the grantee will be required to implement Corrective Action A.

STATE CHECKS

1. **Late, Incomplete or Missing Check:** If State checks were conducted late or are missing from a file, or are incomplete (e.g. state of residence was not conducted), the grantee will be required to implement Corrective Action A.
2. **Incorrect State Check:** If State checks were incorrectly conducted (e.g. checks were conducted through vendors that used sources not authorized by CNCS) the grantee will be required to implement Corrective Action A.
3. **Incorrect Assigned Accompanier:** If the program model requires accompaniment, and accompaniment was not performed by the appropriate accompanier, the grantee will be required to implement Corrective Action B.
4. **Accompaniment Not Performed:** If the program model requires accompaniment, and accompaniment was not performed, the grantee will be required to implement Corrective Action B.
5. **Accompaniment Not Documented:** If the program model requires accompaniment, and accompaniment was not adequately documented, the grantee will be required to implement Corrective Action B.

FBI CHECKS

1. **Late or Missing Check:** If the FBI check was conducted late or is missing from a file, the grantee will be required to implement Corrective Action A.
2. **Incorrect FBI Check:** If FBI checks were incorrectly conducted (e.g. grantee incorrectly assumed a state repository included FBI results with the state check or that a vendor national check was the same check as a FBI check), the grantee will be required to implement Corrective Action A.
3. **Incorrect Assigned Accompanier:** If the program model requires accompaniment, and accompaniment was not performed by the appropriate accompanier, the grantee will be required to implement Corrective Action B.
4. **Accompaniment Not Performed:** If the program model requires accompaniment, and accompaniment was not performed, the grantee will be required to implement Corrective Action B.
5. **Accompaniment Not Documented:** If the program model requires accompaniment, and accompaniment was not adequately documented, the grantee will be required to implement Corrective Action B.

ALL OTHER STEPS IN THE NSCHC PROCESS

For all other findings, the grantee will be required to implement Corrective Action C.

REQUIRED CORRECTIVE ACTIONS

Corrective Action A – For Late, Missing, or Incorrect Checks

Step 1: Correctly conduct any missing checks immediately

Instruct the grantee to conduct the missing or incorrectly conducted components of the check and maintain the results. If appropriate, instruct the grantee to submit an ASP or an Exemption request. The Monitoring Official has the discretion to request the documentation for review as follow up. Checks that were completed late, but are otherwise compliant, do not need to be reconducted.

Step 2: Write detailed procedures. The Monitoring Official has the discretion to request revised grantee policies or procedures for follow-up review.

Step 3: Undergo training

Appropriate grantee staff must undergo CNCS training on NSCHC requirements, as well as a second training on the grantee's NSCHC procedures. The grantee is required to notify the Monitoring Official when all training is complete.

Corrective Action B – For Findings That Accompaniment Did Not Occur

Step 1: Conduct accompaniment if results are pending

Upon discovery of noncompliance with performing accompaniment, immediately implement accompaniment if checks are still pending. If appropriate, instruct the grantee to submit an Alternative Search Protocol (ASP) or an Exemption request. The Monitoring Official has the discretion to request the documentation for follow-up review.

Step 2: Write detailed procedures

Accompaniment policies and procedures must detail who is eligible/appropriate to be the accompanier, when accompaniment must be performed, when accompaniment may cease, and what method will be used to document accompaniment. The Monitoring Official has the discretion to request revised policies and procedures for review as follow up.

Step 3: Undergo training

Appropriate grantee staff must undergo CNCS training on CHC requirements, as well as a second training on the grantee's CHC policy. The program is required to notify the Monitoring Official when all training is complete.

Corrective Action C – For Other NSCHC Noncompliance Findings

Step 1: Fulfill or correct noncompliance

Upon discovery of noncompliance with any other required step of the CHC, the grantee will be required to document and perform the missing/incorrect step. If appropriate, the grantee will be instructed to submit an ASP or an Exemption request. The Monitoring Official has the discretion to request the documentation for review.

Step 2: Write detailed procedures. The Monitoring Official has the discretion to request revised policies and procedures for follow-up review.

Step 3: Undergo training

Appropriate grantee staff must undergo CNCS training on CHC requirements, as well as a second training on the grantee's policy. The grantee is required to notify the Monitoring Official when all training is complete.